UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

3067 ORANGE AVE, LLC DBA ANAHEIM CREST NURSING CENTER
Employer

and **Case 21-RC-264740**

SERVICE EMPLOYEES INTERNATIONAL UNION, LOCAL 2015
Petitioner

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for the Employer
Manuel Boigues, Esq.
for the Petitioner
Stephen Simmons, Esq.
for the Regional Director.

REPORT AND RECOMMENDATIONS ON CHALLENGES

INTRODUCTION AND PROCEDURAL HISTORY

KIMBERLY SORG-GRAVES, ADMINISTRATIVE LAW JUDGE. Pursuant to a representation petition filed on August 14, 2020,[1] and a September 24 Decision and Direction of Election (DDE)[2] issued in this matter, Region 21 of the National Labor Relations Board (Board) conducted a mail-ballot election in October to determine whether a unit of employees working for 3067 Orange Ave, LLC dba Anaheim Crest Nursing Center (Employer) wanted to be represented for the purposes of collective bargaining by the Service Employees International Union, Local 2015 (Petitioner). (Bd. Exh. 1(a); see also the DDE.)[3]

The Employer operates a skilled nursing home in Anaheim, California (Anaheim facility). The parties stipulated and the Regional Director found in the DDE that the following employees at the Anaheim facility constitutes an appropriate bargaining unit (the Unit):

> Included: All full-time, regular part-time, and on-call CNAs, RNAs, Cooks, Dietary Aides, Janitors, Housekeeping employees, Laundry employees, and Activity employees employed by the Employer at its facility located at 3067 West Orange Avenue, Anaheim, California.

[1] All dates refer to 2020, unless otherwise stated.
[2] I take judicial notice of the Decision and Direction of Election issued in this case by the Regional Director of Regional 21 on September 24, 2020.
[3] Abbreviations in this report are as follows: "Tr." for transcript; "Bd. Exh." for Board's Exhibits; "E Exh." for Employer's Exhibits; "P Exh." For Petitioner's Exhibits; "Rej. P Exh." for Rejected Petitioner's Exhibits.

> Excluded: All other employees, office clerical employees, confidential employees, managerial employees, guards and supervisors as defined in the Act.

Pursuant to the DDE, those eligible to vote in the election had to be employed in a unit position during the payroll period ending September 15. The DDE also states that:

> Eligible to vote are those employees in the unit who were employed during the **payroll period ending September 15, 2020,** including employees who did not work during that period because they were ill, on vacation, or temporarily laid off. (emphasis in the original)
>
> The parties stipulated that **also eligible** to vote in the election are employees in the unit described above who have worked an average of 4 hours or more per week during the 13 weeks immediately preceding the eligibility date for the election. (emphasis added)

The ballots were mailed on October 2 and were required to be returned to Region 21's office no later than October 27. The Region conducted a count and prepared a tally of ballots on October 27, reflecting that 27 votes were cast for and 25 votes were cast against the Petitioner and 7 ballots were challenged. (Bd. Exh. 1(a).) Two of the challenges were later withdrawn by the Petitioner. Id. On November 24, the Regional Director for Region 21 issued an Order Directing Hearing and Notice of Hearing on Challenged Ballots to determine whether each of the remaining 5 challenged ballots, a sufficient number of ballots to affect the outcome of the election, should be opened and counted.[4]

The case was assigned to me, through the Division of Judges, to conduct the hearing and issue a report and recommendations concerning the challenged ballots. I held the hearing on December 1, via videoconference, due to the continuing compelling circumstances caused by the COVID-9 pandemic. All parties were represented by counsel and were afforded a full opportunity to be heard, to call and examine witnesses, to introduce evidence, and to file briefs by no later than December 7. The Employer and the Petitioner submitted post-hearing briefs summarizing their positions on the issues, which I have carefully considered.

BURDEN OF PROOF IN CHALLENGES TO VOTER ELIGIBILITY

The burden of proof rests on the party seeking to exclude a challenged individual from voting. *Sweetener Supply Corp.*, 349 NLRB 1122, 1122 (2007), citing *Golden Fan Inn*, 281 NLRB 226, 230 n.24 (1986). It is the party seeking to establish the voter's ineligibility that bears the burden of proof, even if the Board Agent conducting the election and/or count initially challenged the voter's ballot. *Id.*, citing *Arbors at New Castle*, 347 NLRB 544, 545-546 (2006). Thus, the Petitioner has the burden to establish that the challenged ballot of Moung Suk Kim

[4] The two ballots, for which the Petitioner has withdrawn its challenges, if opened and counted, are not sufficient in number to affect the outcome of the election. If one or more of the five remaining challenged ballots are directed to be opened and counted, then there will be a sufficient number of ballots to affect the outcome of the election, requiring them to be opened and counted.

should be sustained. The Employer has the burden to establish that the challenged ballots of Adolfo Toral, Maria Toral, Yesica Rivera, and Samantha De Ocampo should be sustained.

THE PETITIONER'S CHALLENGE TO THE BALLOT OF MOUNG SUK KIM

The Parties' Contentions

The Petitioner contends that Moung Suk Kim (Kim) was no longer employed on the eligibility date, and therefore, the ballot cast by Kim should not be opened and counted. The Employer contends that Kim's ballot should be opened and counted because she is eligible as a full-time employee in the unit who has been on medical leave.

The Relevant Facts

Kim was hired in 2004 and worked for the Employer as a full-time dietary staff employee. (E Exh. 1.) Kim was listed as "sick" on the August dietary department's schedule but was not listed on the September dietary department schedule. (P Exh. 1 and 2.)

Jesse Brizuela processes payroll for the Employer. (Tr. 24.) Brizuela testified that Kim has been off work since June 30 due to injuries suffered in an accident. Brizuela noticed that Kim had not been on the schedule and spoke to her supervisor about her status. (Tr. 39.) After his inquiry, he received a medical excuse letter from her physician. (Tr. 28.) Brizuela completed a personnel action form indicating that she was granted medical leave effective August 16. (Tr. 38; E Exh. 1 and 2.) Kim's physician estimated that she would be able to return to work on November 30**.** The Petitioner notes that under FMLA Kim is limited to 12 weeks of leave, and that the leave would have been exhausted by the end of September, well before Kim was expected to be able to return to work**.** (Tr. 37.) The record is silent as to whether Kim had returned to work by the date of the hearing. The record contains no evidence to dispute Brizuela's testimony that Kim was neither terminated nor resigned. (Tr. 25, 28.)

Analysis

The well-established Board standard "presumes an employee on sick or disability leave to be eligible to vote absent an affirmative showing that the employee has resigned or been discharged." *Home Care Network, Inc.*, 347 NLRB 859 (2006), citing *Red Arrow Freight Lines*, 278 NLRB 965 (1986). See also *Pepsi-Cola Co.*, 315 NLRB 1322 (1995).[5] Here, the Petitioner has failed to meet its burden of affirmatively showing that Kim has resigned or has been discharged. The Petitioner points to the fact that the FMLA only provides for 12 weeks of leave and that the paperwork for the leave was not completed until after the petition in this matter was filed. The Petitioner also points out that Kim's name was removed from the monthly schedule unlike other employees whose names remained on the schedule but were listed as being on leave.

[5] In this line of cases, there is some contention that the test should require that the employee have a the "reasonable expectancy of return." Based upon the physician's expectation that Kim would be able to return to work on November 30, and the employer's apparent willingness to grant her, and as discussed below, other employees leave, there is a reasonable expectation that Kim will return to work.

First, I note that the voter eligibility date was within the 12 weeks from when Kim first went on leave. Second, nothing prevents an employer from affording employees a longer medical leave or to grant a medical leave even if the FMLA requirements are not actually met. The medical note from Kim's doctor evidences her expectation of returning to work, and the Employer's completion of the personnel action form evidences the Employer's willingness to return her to work. Based upon the available evidence, I find that the Petitioner failed to show that Kim has resigned or been discharged.

Accordingly, I recommend that the ballot of Moung Suk Kim be opened and counted.

THE EMPLOYER'S CHALLENGES TO THE BALLOTS OF ADOLFO TORAL, MARIA TORAL, AND YESICA RIVERA

The Parties' Contentions

The Employer contends that the ballots cast by Adolfo Toral (Mr. Toral), Maria Toral (Ms. Toral), and Yesica Rivera[6] (Rivera) should not be opened and counted, regardless if they are considered part-time or on-call employees, because they did not work an average of 4 hours or more per week during the 13 weeks immediately preceding the eligibility date for the election, which was June 16 to September 15 (eligibility period). In support of this contention, the Employer relies upon the formula set forth in *Davison-Paxon Co*., 185 NLRB 21, 23-24 (1970) to assert that an employee must average at least 4 hours of unit work per week during the last quarter (13 weeks) immediately prior to the election eligibility date to be eligible to vote. See also *Woodward Detroit CVS, LLC*, 355 NLRB 1115 (2010). The Employer also points to similar, stipulated language in the DDE noted above.[7] The Employer makes no argument that these employees do not perform unit work or should be found ineligible for any reason other than the number of hours worked within the eligibility period.

The Petitioner contends that each of these employees is eligible to vote as a regular part-time employee in the unit and that any failure to meet a minimum of 4 hours per week was due to illness or other excusable reasons. The Petitioner contends that the test to determine whether an employee is a regular part-time employee is more nuanced than a straight average of hours based upon the *Davison-Paxon* formula and that the test to determine whether one is a regular part-time employee takes into consideration such factors as regularity and continuity of employment, tenure of employment, similarity of work duties, and similarity of wages, benefits, and other working conditions. See *Arlington Masonry Supply, Inc.*, 339 NLRB 817, 819-820 (2003) (citing to *Muncie Newspapers, Inc*., 246 NLRB 1088, 1089 (1979)).

[6] Rivera's full name listed on employer records is Yesica B. Rivera Martinez and she was also referred to as Jessica Rivera in some documents. (E Exh. 5; Bd. Exh. 1(a).)

[7] I note that the stipulated language in the DDE "that also eligible to vote in the election are employees. . .." is inclusive language. Therefore, I give no merit to the contention by the Employer that this language somehow excludes or creates a higher bar for regular part-time or on-call employees than the standards set by Board precedent.

The Relevant Facts

Mr. Toral and Ms. Toral are married and have worked for the Employer for most of the preceding five years. (Tr. 135-137.) They work as certified nurse aides, referred to as CNAs. (Tr. 135.) About June 2019, they switched from full-time to part-time work and completed paperwork provided by one of the Employer's directors of staff development, noting their part-time status and ending their Employer sponsored health insurance eligibility.[8] (Tr. 137, 138-139.) They switched to part-time because they started a full-time position for another employer and moved closer to that job. They continued to work for the Employer one day per week. Because they live 55 miles from the Anaheim facility, they commute together and work the same shift. (Tr. 137.) Towards the end of each month after reviewing their schedules for the next month, Mr. Toral texts one of the Employer's directors of staff development the dates that they are available for the next month, usually consisting of one day each week. Mr. Toral testified that they have always been scheduled for the dates they offer. (Tr. 141-144; P Exhs. 7 and 10.) The Employer's monthly schedules list the Torals as part-time CNAs. (P Exh. 7.)

The Employer presented evidence that during the eligibility period Mr. Toral and Ms. Toral each worked less than an average of 4 hours per week. (Tr. 29-33; E Exhs. 3 and 4.) Mr. Toral's timecard records show that he worked approximately 7.5 hours on each of the 6 days that he worked during the eligibility period, totaling 44.78 hours, and that he was marked as sick for 3 shifts. Ms. Toral's accumulated timecard records show that she also worked approximately 7.5 hours on the same 6 days for a total of 44.87 hours and was recorded as sick for the same 3 shifts. (E Exhs. 3 and 4.)

The Torals both became ill with COVID-19 on June 16 and did not return to work for the Employer until August. During the first 2 pay periods they were off, they were each paid for a total of 22.5 hours, or 7.5 hours for each the 3 shifts that they were scheduled to work, pursuant to the Families First Coronavirus Response Act (FFCRA). (Tr. 48-49; P Exhs. 5, 6 and 15.) The FFCRA provides for two weeks of paid sick leave, but the Torals were ill until the beginning of July. (Tr. 148.) From July 5 through July 24 they were listed on the Employer's monthly nursing center schedule as on leave under the Family Medical Leave Act (FMLA). (P Exh. 3.) In each of August and September, they were each scheduled and worked 4 shifts of approximately 7.5 hours, as Mr. Toral testified has been their practice for the last two years, for an average of 6.9 hours per week.[9] (P Exh. 3; E Exhs. 3 and 4.)

The Employer also provided accumulated timecard records showing that Rivera did not work an average of 4 hours per week during the eligibility period. During the eligibility period, she was paid for time worked on 7 days, totaling 34.60 hours. (E Exh. 5.) Rivera worked for the Employer as a full-time CNA for 8 years before transitioning to part-time work two years ago. (Tr. 172-173.) Her regular part-time work schedule was Wednesday, Thursday, and Friday each

[8] The Employer's personnel action form notes whether an employee is full-time, part-time, temporary, or on-call, referred to as PRN on the form. The Employer presented no evidence that the Torals and Rivera were not classified as part-time employees on personnel records as they were on the monthly schedules. (Tr. 36; E Exh. 1.)

[9] There are 61 days in August and September divided by 7 days in a week equals 8.7 weeks. The Torals worked approximately 60 hours during August and September, 7.5 times 8 shifts. Therefore, they averaged 6.9 hours per week during this time period, which I find the credible evidence supports is representative of their regular work schedule absent illness.

week until April when the pandemic caused childcare issues, requiring her to stay home with her young children. (Tr. 173.) The record indicates that Rivera was granted FMLA leave. Rivera communicated with her director of staff development Marx Concepcion via text message in May. Concepcion advised her that he would complete an extension form for her and directs her to sign and fax it back. (P Exh. 9.) The June schedule lists her as being on FMLA leave. (P Exh. 8.) The Employer presented no evidence to contradict Rivera's testimony that she regularly worked three days per week prior to April and had been granted leave. When she offered to return to work in June, she was told that she had to complete COVID-19 testing first, which delayed her return. (Tr. 177; P Exh. 9.)

Rivera's time records indicate the she was paid for completing the COVID-19 testing at the end of June, worked 4.15 hours on July 2, and then started working every Thursday on July 23, then less frequently in August because of childcare issues. (Tr. 173-174; E Exh. 5.) Sometime in September or October, she returned to working every Thursday, and then started working two days per week in November. (P Exh. 4; Tr. 174-175.)

Like the Torals, Rivera informed her director of staff development of her availability for the next month and was scheduled for the days that she was available. (Tr. 179.) The Torals and Rivera are listed on the monthly schedules as part-time employees and are assigned dates of work. The one schedule that lists an employee as "on-call" does not indicate any pre-assigned dates of work. (P Exh. 4.)

Analysis

The test to determine whether one is a regular part-time employee versus a casual employee takes into consideration such factors as regularity and continuity of employment, tenure of employment, similarity of work duties, and similarity of wages, benefits, and other working conditions. See *Arlington Masonry Supply, Inc.*, 339 NLRB 817, 819-820 (2003) (citing to *Muncie Newspapers, Inc*., 246 NLRB 1088, 1089 (1979)). The inquiry examines whether the employee performs unit work with sufficient regularity to demonstrate a community of interest with employees in the bargaining unit. See *Pat's Blue Ribbons & Trophies*, 286 NLRB 918 (1987). The formula the Board typically uses for determining whether an existing employee works with sufficient regularity to qualify as a regular part-time employee is set forth in *Davison-Paxon Co*., 185 NLRB 21 (1970). The *Davison-Paxson* standard requires that the employee must average at least 4 hours of unit work per week during the 13 weeks immediately prior to the election eligibility date. Id. at 23-24. See also *Woodward Detroit CVS, LLC*, 355 NLRB 1115 (2010).[10]

In considering whether an employee is a regular part-time employee, the fact that an employee is employed elsewhere, can turn down work, or is not pre-scheduled for shifts is not determinative. *Arlington Masonry Supply, Inc.*, 339 NLRB 817, 820 (2003); *Tri-State Transportation Co., Inc.,* 289 NLRB 356, 357 (1988) (Board held that an employee's ability to

[10] The Board has recognized that in some industries, such as the entertainment industry, "special circumstances" may warrant deviating from the *Davison-Paxon* formula. See *DIC Entertainment, L.P*., 328 NLRB 660, 660 (1999), enfd. 238 F.3d 434 (D.C. Cir. 2001) (quoting *Trump Taj Mahal Casino Resort*, 306 NLRB 294, 296 (1992)). Compare *Kansas City Repertory Theatre, Inc*., 356 NLRB 147 (2010), and *Julliard School,* 208 NLRB 153 (1978) with *Columbus Symphony Orchestra, Inc*., 350 NLRB 523, 525 (2007), and *Steppenwolf Theatre Co*., 342 NLRB 69, 71 (2004).

decline work and be employed elsewhere is not determinative of employment status). See also *Mercury Distribution Carriers, Inc.,* 312 NLRB 840 (1993) (the fact that a part-time employee does not call in every day to find out if work is available does not require his exclusion from the unit).

The Torals are long-term employees for the Employer. There is no dispute that they perform unit work, receive similar wages, and have other similar working conditions as unit employees for the work they perform. Documentary evidence and Mr. Toral's unrefuted, credible testimony establishes that the Torals regularly worked 4 shifts of approximately 7.5 hours per month before and after being ill with COVID-19 during the eligibility period. Absent the period during which they were ill, they regularly average more than 4 hours of work per week.

As asserted by the Employer, the Torals did not average 4 hours of actual work per week during the eligibility period. If the three shifts or 22.5 hours for which they received sick leave pay is included in the calculation, they averaged 5.18 hours per week during the eligibility period. As discussed above, employees on sick leave are presumed to be eligible to vote "absent an affirmative showing that the employee has resigned or been discharged." *Home Care Network, Inc.*, 347 NLRB 859 (2006), citing *Red Arrow Freight Lines*, 278 NLRB 965 (1986). The Employer presented no evidence that the Torals were discharged or resigned. To the contrary, the Employer's monthly schedule listed them as part-time CNAs who were absent due to FMLA, indicating that they were expected to return to their regular part-time work, as they did. Therefore, I find that the Employer has failed to prove the Torals are not regular part-time employees who were eligible to vote in the election.

Similarly, Rivera is a long-term employee of the Employer. She initially performed full-time unit work but switched to regular part-time work a couple years ago. The Employer failed to refute that she regularly worked three days per week until April when she took leave to care for her children as a result of the COVID-19 pandemic. As the Employer asserts, records reflect that she did not work an average of 4 hours per week during the eligibility period. Yet, schedules and her communications with her supervisor evidence that she was granted FMLA leave during the eligibility period with the intent of returning to work. The Employer provided no evidence to dispute that she was granted leave. While the *Red Arrow* line of cases discuss employees on sick or disability leave, under the current circumstances caused by the pandemic, I find it appropriate to extend the presumption of eligibility to those who have been granted leave for childcare reasons. I find that the Employer has failed to rebut the presumption that otherwise eligible employees who are on leave are eligible to vote, because the record contains no evidence that Rivera resigned or was discharged.

Accordingly, I recommend that the ballots of Adolfo Toral, Maria Toral, and Yesica Rivera be opened and counted.

THE EMPLOYER'S CHALLENGE TO THE BALLOT OF SAMANTHA DE OCAMPO

The Parties' Contentions

The Employer contends that the challenge to Samantha De Ocampo's (Ocampo) ballot should be sustained because her mother filled out the ballot, signed the envelope, and mailed it to the Regional office without proper authorization. The Petitioner contends that Ocampo authorized her mother to complete her ballot, and therefore, it should be opened and counted.

The Relevant Facts

I note that Ocampo's testimony was often contradictory on its face. I set forth here the evidence that I find credible based upon her testimony and documentary evidence.

When the ballots were mailed out, Ocampo was staying at a hotel close to the Anaheim facility. (Tr. 56.) Her ballot was mailed to her mother's address. Ocampo did not retrieve her ballot from her mother's home before she left on vacation. (Tr. 56-57.) Ocampo spoke to her mother and told her mother to complete the ballot, sign Ocampo's name on the envelope, and return it for her, which her mother did. (Tr. 63.)

At some point thereafter Ocampo spoke with her mother about the ballot. Ocampo testified that her mother told her that representatives of the Petitioner visited her home twice soliciting a vote in favor of unionization. (Tr. 71.) Ocampo's mother either told her that she could not remember how she completed the ballot or that she completed the ballot in favor of the Petitioner. (Tr. 57; E Exh. 8.) Ocampo requested a second ballot from Region 21. (Tr. 57.) An agent from Region 21 took an affidavit in which Ocampo stated that her mother told her that she could not recall how she completed the ballot. (Tr. 64.) A second ballot kit was issued to Ocampo. (Tr. 57.) Ocampo gave an affidavit to an attorney that represents the Employer stating that her mother told her that she marked the ballot in favor of the Petitioner. (E Exh. 8.) Employer representatives drove Ocampo to the offices of Region 21 to drop off her second ballot, but it was after the cutoff for returning ballots and was rejected. (Tr. 69.)

While Ocampo contradicted much of her own testimony, the one statement that she reiterated consistently was that she was unsure whether her mother complied with her wishes in completing the ballot. (Tr. 62-63, 64.) Based upon her accounts of what her mother told her and her actions in response to that information, I find that Ocampo doubted that her mother marked the ballot as Ocampo wished.

Analysis

To prevent fraud, coercion, or other situations that call into question the validity of a ballot in the mail-ballot process, the Board has developed detailed instructions for the proper conduct of mail-ballot elections. See Sec. 11336 of the Board's Casehandling Manual (Part Two) Representation Proceedings. Pursuant to these instructions the mail ballot kit sent to each eligible voter includes Form NLRB-4175 Instructions to Eligible Employees Voting by United

States Mail, which directs the voter, among other procedures, to sign the envelope in which the ballot is returned. The Board has strictly enforced these provisions, including by voiding a ballot where the eligible voter printed instead of signed his name on the envelope. See *Thompson Roofing, Inc*., 291 NLRB 742 (1988). See also Sec. 11336.5(c) of the Board's Casehandling Manual (Part Two) Representation Proceedings.

Here, the Petitioner asserts that Ocampo's ballot, which she authorized her mother to complete, should not be voided/withdrawn to protect against undue influence. The Board has long held that a voter may not withdraw their ballot once it has been cast to prevent coercion that may affect the outcome of the election, but those cases, unlike here, involved ballots correctly completed and submitted by eligible voters. *T&G Manufacturing*, 173 NLRB 1503, 1504 (1969); *Great Eastern Color Lithographic Corp*., 131 NLRB 1139, 1140-1141 (1961).

While no Board precedent directly on point has come to my attention, a similar situation arose in *Space Mark, Inc.*, 325 NLRB 1140, 1142 (1998). In *Space Mark,* an eligible voter's wife, who had a general power of attorney to act on the voter's behalf due to his frequent out-of-town work, completed the ballot, signed the envelope, and returned it at his request. Id. at 1141-1142. In the meantime, he requested and received a second ballot kit, marked that ballot, signed the envelope, and timely returned it. Id. The Board typically finds that the first ballot received from an eligible voter is the proper ballot to open and count to avoid undue influence being placed on voters, but it did not apply that precedent in *Space Mark*. Instead, the Board noted that the parties voided the first ballot cast by his wife and held that the second ballot cast by the voter be opened and counted. Id. The Board did not conclude that the first ballot should have been counted despite its procedural defects.

The circumstances surrounding Ocampo's ballot highlight the need for the Board's procedures. If someone else completes a ballot for an eligible voter, even at the voter's request, it is impossible to know if the person completing the ballot complied with the voter's wishes, as is the case with the ballot cast by Ocampo's mother. The Petitioner has not pointed to any Board precedent allowing another person to complete a ballot for the eligible voter. I find no support for such a departure from Board procedures, which the Board has so strictly enforce that it voided a ballot because the eligible voter printed his name on the return envelope instead of signing it. *Thompson Roofing*, above.

While the many interactions Ocampo had concerning her ballot may raise concerns about possible coercion, that does not change the fact that the ballot completed by her mother does not comply with mail-ballot procedures. Under the circumstances of this case, I find that the ballot at issue, which was completed by Ocampo's mother, fails to meet the requirements for a validly cast ballot, and therefore, should be voided.

Accordingly, I recommend that the ballot of Samantha De Ocampo be found void and not opened or counted.

CONCLUSION

I recommend that the ballots of Moung Suk Kim, Adolfo Toral, Maria Toral, and Yesica Rivera be opened and counted, along with the two ballots for which the Petitioner withdrew its

challenges as noted in the Order Directing Hearing and Notice of Hearing on Challenged Ballots in this matter. I also recommend that the ballot of Samantha De Ocampo be voided and not be opened or counted.

APPEAL PROCEDURE

Pursuant to Section 102.69(c)(1)(iii) of the Board's Rules and Regulations, any party may file exceptions to this Report, with a supporting brief if desired, with the Regional Director of Region 21 by **December 29, 2020**. A copy of such exceptions, together with a copy of any brief filed, shall immediately be served on the other parties and a statement of service filed with the Regional Director.

Exceptions must be E-Filed through the Agency's website and may not be filed by facsimile. To E-File the request for review, go to www.nlrb.gov, select E-File Documents, enter the NLRB Case Number, and follow the detailed instructions. If not E-Filed, the exceptions should be addressed to the Regional Director, National Labor Relations Board, 312 North Spring Street, 10th Floor, Los Angeles, California 90012 and must be accompanied by a statement explaining why the filing party does not have access to the means for filing electronically or filing electronically would impose an undue burden.

Pursuant to Sections 102.111–102.114 of the Board's Rules, exceptions and any supporting brief must be received by the Regional Director by close of business at 5:00 p.m. Pacific Time on the due date. If E-Filed, it will be considered timely if the transmission of the entire document through the Agency's website is accomplished by no later than 11:59 p.m. Pacific Time on the due date.

Within 5 business days from the last date on which exceptions and any supporting brief may be filed, or such further time as the Regional Director may allow, a party opposing the exceptions may file an answering brief with the Regional Director. An original and one copy shall be submitted. A copy of such answering brief shall immediately be served on the other parties and a statement of service filed with the Regional Director.

Dated, Washington, D.C., December 14, 2020.

Kimberly Sorg-Graves

Kimberly R. Sorg-Graves
Administrative Law Judge